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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

HECTOR VERDUGO PONCE,

Defendant and Appellant.

D074224

(Super. Ct. No. JCF000184)

APPEAL from a judgment of the Superior Court of Imperial County, Diane B. Altamirano, Judge. Affirmed.

Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The People charged Hector Verdugo Ponce with four felony counts related to the sexual abuse of a victim 14 years or older. He pled no contest to count 2, oral copulation

on a child over the age of 14, in violation of Penal Code¹ section 288a, subdivision (c), based on a plea agreement, and the court sentenced him to a term of eight years in prison.

Ponce's counsel has filed a brief under the procedures set forth in *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*).

Ponce has not responded to our invitation to file a supplemental brief. Having independently reviewed the entire record in accordance with *Wende* and *Anders* and having found no reasonably arguable issues for reversal on appeal, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The People charged Ponce with one count each of sodomy by use of force on a minor victim over 14 years of age (§ 286, subd. (c)(2)(C), count 1), forcible oral copulation on a minor victim over 14 years of age (§ 288a, subd. (c)(2)(C), count 2), and assault by means likely to produce great bodily injury (§ 245, subd. (a)(4), count 3) based on events that took place on December 19, 2015; and one additional count of forceable oral copulation on a minor victim over 14 years of age (§ 288a, subd. (c)(2)(C), count 4) based on events that took place on December 24, 2015.

After some delays and a refile of the complaint, Ponce pled not guilty to the charges and waived time, and the trial court set a jury trial for January 16, 2018. On January 19, 2018, as trial was about to commence, the government disclosed additional discovery and the court granted Ponce's motion to continue the trial for approximately one month.

¹ All further statutory reference are to the Penal Code.

On February 22, 2018, again as trial was about to commence, the prosecutor brought a motion to continue as he was involved in another trial that was delayed due to a medical issue involving the defendant in that matter. The court granted the motion and set trial for no later than March 7, 2018, the last date the jury was qualified in the other matter. The prosecutor became available as of March 1, 2018, but the court did not commence trial until March 6, 2018. Meanwhile, on March 5, 2018, Ponce filed a motion to dismiss, arguing the court should have commenced trial as soon as the prosecutor was ready. (See, § 1382.)

On March 9, 2018, the government disclosed the existence of additional undisclosed discovery, including reports from prior investigations regarding alleged abuse against the victim and the victim's sibling. Ponce filed a motion to dismiss pursuant to section 1054.5 or, in the alternative, for mistrial. The court found dismissal was not warranted because there was no evidence of an intentional non-disclosure by the prosecutor but granted the motion for mistrial to give the defense additional time to obtain and review the records. A new trial date was set for May 18, 2018.

On May 18, 2018, Ponce withdrew his not guilty plea and entered a plea of no contest as to count 2, oral copulation with a victim 14 years of age or older, based on an agreement that he would be sentenced to the middle term of eight years and the remaining charges would be dismissed, and his understanding that the consequences of taking the case to trial could be more harsh. At the sentencing hearing, Ponce requested a *Marsden* (*People v. Marsden* (1970) 2 Cal.3d 118) hearing, but then withdrew the

motion after speaking with the court and his counsel. The court sentenced him to eight years in prison, consistent with the plea agreement.

DISCUSSION

Ponce's counsel includes four potential issues he considered, "to assist the court in conducting its independent review of the record" (*Anders, supra*, 386 U.S. at p. 744):

"1. Should a motion to dismiss pursuant to section 1382 have been granted after the first case was dismissed and refiled, then continued again due to the prosecutor's unavailability, but did not commence immediately when the prosecutor became available, thereby violating appellant's speedy trial rights? Was appellant deprived of effective assistance of counsel when counsel failed to file a pretrial writ alleging a deprivation of right to speedy trial?

"2. Should a motion to dismiss [have] been granted, instead of a mistrial, . . . when the prosecution provided last minute discovery in violation of section 1054.5 that required a continuance so the defense could review discovery?

"3. Was appellant deprived of effective assistance of counsel when his attorney did not inform appellant that pursuant to his plea deal he would only receive 20 percent conduct credits pursuant to section 2933.1?

"4. Was appellant's right to due process violated by improper rulings regarding admission of a prior bad act if the ruling impacted appellant's decision to plead guilty?"

A review of the record, including the issues suggested by counsel, pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738 has disclosed no reasonably arguable appellate issue.

Ponce received adequate representation by counsel on appeal.

DISPOSITION

The judgment is affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.